

## **REMARKS**

Applicant is in receipt of the Office Action mailed September 22, 2004. Claims 1, 7, 11-17, 19, 27-31, 34 and 36 have been amended to more clearly claim the present invention. Claims 5, 6, 22, 23, and 33 have been cancelled. New claims 38-55 have been added. Thus, claims 1-4, 7-21, 24-32, and 34-55 remain pending in the case. Further consideration of the present case is earnestly requested in light of the following remarks.

### **Section 102 Rejections**

Claims 1-10, 17-26, and 31-35 were rejected under 35 USC 102(b) as being anticipated by Sojoodi et al (U.S. Patent 5,784,275, "Sojoodi"). Applicant respectfully disagrees.

As the Examiner is certainly aware, anticipation requires the presence in a single prior art reference disclosure of each and every element of the claimed invention, arranged as in the claim. *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 USPQ 481, 485 (Fed. Cir. 1984). The identical invention must be shown in as complete detail as is contained in the claims. *Richardson v. Suzuki Motor Co.*, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Amended claim 1 recites:

1. (Currently Amended) A computer-implemented method for creating a graphical program, the method comprising:

receiving user input selecting one or more nodes to include in the graphical program from at least one first palette, wherein the at least one first palette presents a plurality of all available nodes for selection;

including the one or more selected nodes in the graphical program; and

displaying one or more suggested nodes to include in the graphical program in a second palette, based on the one or more nodes selected by the user input, wherein the second palette is separate from the at least one first palette, and wherein the one or more suggested nodes are selectable by the user for inclusion in the graphical program.

The Office Action cites Sojoodi col. 16 line 64 – col. 17 line 2, and Figure 17 in rejecting claim 1. Applicant respectfully submits that Sojoodi fails to teach numerous features and limitations of amended claim 1. For example, Applicant notes that the cited portion and figure simply describe and illustrate help information regarding the terminals of a node. More specifically,

“a help screen illustrating the terminals of a VISA Write function node is shown. The VISA write node is illustrative of most VISA function nodes in that it has a VISA session input terminal, a dup VISA session output terminal, an error in input terminal, and an error out output terminal.”

Applicant respectfully submits that Sojoodi’s help screen illustrating the terminals of a VISA function node in no way *displays one or more suggested nodes to include in the graphical program in a second palette, based on the one or more nodes selected by user input*. Rather, Sojoodi’s help screen merely provides information regarding the terminals of a particular VISA function node, specifically a VISA write node. Applicant notes that Sojoodi’s displayed help information does not present “suggested nodes to include in the graphical program”, and moreover, does *not* display the suggested nodes based on the one or more nodes (previously) selected by the user input. More particularly, Sojoodi fails to teach or disclose *displaying the one or more suggested nodes in a second palette* that is separate from the at least one first palette from which the (original) one or more nodes were (previously) selected, *where the one or more suggested nodes are selectable by the user for inclusion in the graphical program*.

Thus Applicant respectfully submits that Sojoodi fails to teach all the features and limitations of claim 1, and so claim 1, and those claims dependent thereon are patentably distinct and non-obvious over Sojoodi, and are thus allowable for at least the reasons provided above.

Independent claims 19, 31, and 34 include similar limitations as claim 1, and so the above arguments apply with equal force to these claims. Thus, Applicant submits that claims 19, 31, and 34, and those claims respectively dependent thereon, are similarly patentably distinct and non-obvious over Sojoodi, and are thus allowable for at least the reasons provided above.

Additionally, claim 35 is directed to user interface elements instead of graphical program nodes. Nowhere does Sojoodi teach or suggest or even hint at *displaying one or more user interface elements in the window in response to user input* and *determining one or more suggested user interface elements in response to the user input*, then *displaying the one or more suggested user interface elements*. Applicant submits that the Examiner has improperly equated Sojoodi's graphical program nodes with user interface elements, and notes that the present Applicant clearly discloses both graphical program nodes *and* user interface elements, and that these graphical program elements are distinct from one another. Applicant thus submits that Sojoodi similarly fails to teach or disclose all the features and limitations of claim 35, and so respectfully submits that claim 35, and those claims dependent thereon, are also patentably distinct and non-obvious over Sojoodi, and are thus allowable for at least the reasons provided above.

Applicant also respectfully submits that Choy, cited in the 103 rejections below, also fails to teach all the features and limitations of independent claims 19, 31, 34, and 35.

Removal of the 102 rejections of claims 1-10, 17-26, and 31-35 is respectfully requested.

### **Section 103 Rejections**

Claims 11-16, 27-30, and 36-37 were rejected under 35 USC 103(a) as being unpatentable over by Sojoodi et al (U.S. Patent 5,784,275, "Sojoodi") in view of Choy et al (U.S. Patent 5,506,952, "Choy"). Applicant respectfully disagrees.

Applicant submits that since independent claims 1 and 19 have been shown above to be allowable, claims 11-16, and 27-30, respectively dependent therefrom, are similarly allowable. Removal of the 103 rejection of these claims is respectfully requested.

Applicant further submits that neither Sojoodi nor Choy provides a motivation to combine, and so are not properly combinable. Applicant reminds the Examiner that to establish a prima facie obviousness of a claimed invention, all claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 U.S.P.Q. 580 (C.C.P.A. 1974), MPEP 2143.03. Obviousness cannot be established by combining or

modifying the teachings of the prior art to produce the claimed invention, absent some teaching or suggestion or incentive to do so. *In re Bond*, 910 F. 2d 81, 834, 15 USPQ2d 1566, 1568 (Fed. Cir. 1990).

Furthermore, as held by the U.S. Court of Appeals for the Federal Circuit in *Ecolochem Inc. v. Southern California Edison Co.*, an obviousness claim that lacks evidence of a suggestion or motivation for one of skill in the art to combine prior art references to produce the claimed invention is defective as hindsight analysis.

In addition, the showing of a suggestion, teaching, or motivation to combine prior teachings “must be clear and particular . . . . Broad conclusory statements regarding the teaching of multiple references, standing alone, are not ‘evidence’.” *In re Dembiczak*, 175 F.3d 994, 50 USPQ2d 1614 (Fed. Cir. 1999). The art must fairly teach or suggest to one to make the specific combination as claimed. That one achieves an improved result by making such a combination is no more than hindsight without an initial suggestion to make the combination.

Applicant respectfully notes that in asserting a motivation to combine Sojoodi and Choy, the Examiner has simply cited a “a need for a method and an apparatus for guiding the construction of sequences of related elements and procedure for an expert system, which method and apparatus is simple and easy to operate for all users”. Applicant submits that this is merely hindsight analysis based on Applicant’s claim, and is not a proper motivation for the 103 rejection.

Applicant further submits that even were Sojoodi and Choy properly combinable, which Applicant argues they are not, the resulting combination would still not teach Applicant’s invention as represented by claim 36, for at least the reasons provided below.

Amended claim 36 recites:

36. A computer-implemented method for creating a script, the method comprising:

receiving user input selecting one or more steps to include in the script from at least one first palette, wherein the at least one first palette presents a plurality of all available steps for selection;

including the one or more selected steps in the script; and

displaying one or more suggested steps to include in the script in a second palette, based on the one or more steps selected by the user input, wherein the second palette is separate from the at least one first palette, and wherein the one or more suggested nodes are selectable by the user for inclusion in the graphical program.

As may be seen, claim 36 includes similar limitations as claim 1, but directed to script steps instead of graphical program nodes. For similar reasons presented in the arguments above, Applicant submits that Sojoodi fails to teach or suggest the features and limitations of claim 36.

Regarding Choy, Applicant notes that Choy is directed to development of data processing systems such as expert system rules (Abstract), and respectfully submits that Choy fails to teach all the features and limitations of claim 36. For example, nowhere does Choy teach or suggest *receiving user input selecting one or more steps to include in the script from at least one first palette, wherein the at least one first palette presents a plurality of all available steps for selection, and including the one or more selected steps in the script, then, displaying one or more suggested steps to include in the script in a second palette, based on the one or more steps selected by the user input, wherein the second palette is separate from the at least one first palette, and wherein the one or more suggested nodes are selectable by the user for inclusion in the graphical program.*

Rather, in Choy's system and method, a single palette displays all the available icons for use in the data processing system, where icons not suitable for inclusion are "grayed out" *in the same palette*, and are not-selectable by the user. Nowhere does Choy teach or suggest displaying one or more suggested steps to include in the script *in a second palette, where the second palette is separate from the at least one first palette*. Thus, for at least the reasons provided above, Applicant submits that claim 36, and those claims dependent thereon, are patentably distinct and non-obvious over Sojoodi and Choy, taken either singly or in combination, and are thus allowable.

Removal of the 103 rejection of claims 11-16, 27-30, and 36-37 is respectfully requested.

**Added Claims**

New independent claims 38-46, 54, and 55 each include features and limitations which have been shown above to be novel and non-obvious over Sojoodi and/or Choy. Applicant respectfully submits that for various of the reasons provided above, claims 38-46, 54, and 55, and those claims respectively dependent thereon, are similarly patentably distinct and non-obvious over Sojoodi and Choy, both singly and in combination, and are thus similarly allowable.

Applicant also asserts that numerous ones of the dependent claims recite further distinctions over the cited art. However, since the independent claims have been shown to be patentably distinct, a further discussion of the dependent claims is not necessary at this time.

## CONCLUSION

Applicant submits the application is in condition for allowance, and an early notice to that effect is requested.

If any extensions of time (under 37 C.F.R. § 1.136) are necessary to prevent the above referenced application(s) from becoming abandoned, Applicant(s) hereby petition for such extensions. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert & Goetzel PC Deposit Account No. 50-1505/5150-54300/JCH.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☒ Notice of Change of Address
- ☐ Check in the amount of \$            for fees (            ).
- ☐ Other:

Respectfully submitted,



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